

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

MATTHEW DESCAMPS,  
Defendant.

No. CR-05-104-FVS

ORDER

**THE DEFENDANT** has filed a number of motions. These came before the Court without oral argument on October 26, 2005.

**BACKGROUND**

The defendant has been convicted of more than one felony. He allegedly possessed a firearm on March 25, 2005. On May 10, 2005, an indictment was filed charging him with a violation of 18 U.S.C. § 922(g). He is in the custody of the United States Marshals Service awaiting trial.

**REQUEST TO FILE A CRIMINAL CHARGE OR INSTITUTE A CIVIL RIGHTS ACTION**

The defendant may be seeking to institute a federal perjury prosecution. If so, his motion must be denied because only a grand jury has such authority. *See, e.g., United States v. Navarro-Vargas*, 408 F.3d 1184, 1199-1202 (9th Cir.2005). Alternatively, the defendant may be seeking to institute a federal civil rights action

1 under *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403  
2 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). If so, his motion  
3 must be denied because, in light of *Heck v. Humphrey*, 512 U.S. 477,  
4 486-87, 114 S.Ct. 2364, 2372, 129 L.Ed.2d 383 (1994), the criminal  
5 charge pending against him must first be resolved. *Cf. Harvey v.*  
6 *Waldron*, 210 F.3d 1008, 1014 (9th Cir.2000) ("We . . . hold that *Heck*  
7 applies to pending criminal charges, and that a claim, that if  
8 successful would necessarily imply the invalidity of a conviction in  
9 a pending criminal prosecution, does not accrue so long as the  
10 potential for a conviction in the pending criminal prosecution  
11 continues to exist.").

#### 12 SUPPRESSION OF EVIDENCE

13 The defendant has filed several suppression motions. Each  
14 alleges that law enforcement officers obtained evidence in violation  
15 of the Constitution. However, the defendant's allegations are too  
16 vague to permit the Court to determine whether he is entitled to an  
17 evidentiary hearing, much less whether a constitutional violation  
18 occurred. *Cf. United States v. Ramirez-Garcia*, 269 F.3d 945, 947  
19 (9th Cir.2001) ("An evidentiary hearing must be held only when the  
20 moving papers allege facts which are sufficiently definite, clear,  
21 and specific to enable the trial court to conclude that contested  
22 issues of fact exist.").

#### 23 VALIDITY OF THE INDICTMENT

24 The defendant seems to be seeking dismissal of the indictment  
25 under Federal Rule of Criminal Procedure 12(b)(3). However, his  
26 allegations are too vague to permit the Court to determine whether he

1 is entitled to relief.

2 **PETITION FOR HABEAS RELIEF**

3 The defendant has failed to demonstrate he is being detained in  
4 violation of the Constitution or laws of the United States. As a  
5 result, he is not entitled to habeas relief. 28 U.S.C. § 2241(c)(3).

6 **IT IS HEREBY ORDERED:**

7 1. The defendant's "Motion & Criminal Complaint" (**Ct. Rec. 29**)  
8 is denied.

9 2. The defendant's "Motion to Suppress" (**Ct. Rec. 30**) is denied  
10 as premature.

11 3. The defendant's motion to amend/correct indictment (**Ct. Rec.**  
12 **31**) is denied.

13 4. The defendant's motion to dismiss the indictment (**Ct. Rec.**  
14 **32**) is denied.

15 5. The defendant's motion to suppress (**Ct. Rec. 40**) is denied as  
16 premature.

17 6. The defendant's "Motion & Collateral Attack" (**Ct. Rec. 43**) is  
18 denied.

19 7. The defendant's "Motion to Dismiss" (**Ct. Rec. 57**) is denied.

20 8. The defendant's petition for a writ of habeas corpus (**Ct.**  
21 **Rec. 60**) is denied.

22 **IT IS SO ORDERED.** The District Court Executive is hereby  
23 directed to enter this order and furnish copies to counsel.

24 **DATED** this 26th day of October, 2005.

25 s/Fred Van Sickle  
26 Fred Van Sickle  
United States District Judge